MADFREEDOM
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March 8, 2021

House Committee on the Judiciary
Vermont General Assembly
115 State Street
Montpelier, VT 05633-5301

Re: *H.145 – An act relating to amending the standards for law enforcement use of force*

Dear House Committee on the Judiciary:

I write on behalf of MadFreedom, a human and civil rights advocacy organization whose mission is to secure political power to end the discrimination and oppression of people based on their perceived mental state.

Thank you for the opportunity to testify regarding H.145 – an act relating to amending the standards for law enforcement use of force. As I stated in my oral testimony, MadFreedom supports the latest iteration of H.145 (Draft 2.1, 2-25-2021). MadFreedom believes the bill is much improved primarily because of the prohibited restraint name change – it is now called a chokehold – and the new definition of chokehold, which will create fewer "proof" problems for prosecutors.

Despite the bill's improvement and the compromise it represents, the law enforcement community continues to advocate for inserting the words "to the extent feasible" at the beginning of subdivision (b)(5). Subdivision (b)(5) currently reads:

> When a law enforcement officer knows that a subject's conduct is the result of a medical condition, mental impairment, developmental disability, physical limitation, language barrier, drug or alcohol impairment, or other factor beyond the subject's control, the officer shall take that information into account in determining the amount of force appropriate to use on the subject, if any.

MadFreedom is adamantly opposed to the inclusion of the words "to the extent feasible" in subdivision (b)(5). Each time law enforcement advocates for the inclusion of the phrase "to the

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extent feasible," it misrepresents the requirement of subdivision (b)(5) as it currently reads. Law enforcement incorrectly asserts that subdivision (b)(5) requires a law enforcement officer to assess the root cause of a subject's behavior. That is simply not the case.

Subdivision (b)(5) requires law enforcement to take into account a subject's impairment only when that impairment is known to a law enforcement officer. It does not require the law enforcement officer to make any assessment as to the cause of a subject's conduct.

Subdivision (b)(5) is intended to address the situation that arises all too often when individuals, who have committed no crime, are killed or injured by law enforcement officers in their homes during so-called welfare checks. In many of these instances, family members have reached out to law enforcement for help and have explained that their loved one has an impairment. It is in these instances that subdivision (b)(5) requires a law enforcement officer to take into account the subject's known impairment in determining the amount of force appropriate to use on the subject, if any.

Subdivision (b)(5) codifies recent case law; it does not expand the law or create a new constitutional requirement. In *Chamberlain v. City of White Plains*, the Second Circuit Court of Appeals adopted the rule that use of force against an individual whom the officer knows or reasonably should know is suffering from a mental illness should not be evaluated in the same way as use of force to apprehend a person suspected of serious criminal wrongdoing. (*Chamberlain v. City of White Plains*, 960 F3d 100 (2d Cir. May 29, 2020); see also *King v Hendricks County Comm'rs*, 954 F.3d 981, 984 (7th Cir. 2020).)

Other circuit courts have explained that "the level of force that is constitutionally permissible in dealing with a mentally ill person 'differs both in degree and in kind from the use of force that would be justified against a person who has committed a crime or who poses a threat to the community.'" *Gray v. Cummings*, 917 F.3d 1, 11 (1st Cir. 2019) (quoting *Bryan v. MacPherson*, 630 F.3d 805, 829 (9th Cir. 2010)). "Consequently, a subject's mental illness is a factor that a police officer must take into account in determining what degree of force, if any, is appropriate." *Id*. (citing *Estate of Armstrong ex rel. Armstrong v. Village of Pinehurst*, 810 F.3d 892, 900 (4th Cir. 2016); *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 904 (6th Cir. 2004); see also *Vos v. City of Newport Beach*, 892 F.3d 1024, 1034 (9th Cir. 2018) ("These indications of mental illness create a genuine issue of material fact about whether the government's interest in using deadly force was diminished.")

Subdivision (b)(5) has the potential to save lives if law enforcement heeds its directive. MadFreedom urges the legislature to resist any loosening of the requirement of subdivision (b)(5).

Thank you for your consideration.

Very truly yours,

Wilda L. White, JD, MBA
Founder